IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

NOTICE OF MOTION NO.3185 OF 2004

IN

SUIT NO.3121 OF 2004

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Gopal L. Raheja
and anr. ...Plaintiffs

v/s.

Vijay B. Raheja
and others. ...Defendants

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Mr.Janak Dwarkadas with Mr.Ravi Kadam and Mr.P.K. Shroff and Ms.Radhika Pinzaru and Mr.M. Subodh Joshi i/b P.K.Shroff & co. for the Plaintiffs.

Mr.R.A.Dada with Mr.Mahendra Ghelani i/b Law Charter for Defendants Nos. 5 to 7.

Mr.N.M.Seervai with Mr.Virag Tulzapurkar i/b J. Sagar & Associates for the Defendants Nos. 1 to 4.

Ms. Rajani Iyer i/b Raval Shah & Co. for Defendant No.8.

Mr.M.S.Doctor i/b R.A.E. Essani for Defendant No.9.

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CORAM: D.K.DESHMUKH, J.

DATED: 14TH MARCH,2005

P.C.:

1. This Notice of Motion is taken out by the Plaintiffs. By this Notice of Motion the Plaintiffs claim several reliefs including an interim order for appointment of the Receiver. The facts that are material and relevant for deciding this Notice of Motion are that

. According to the Plaintiffs, the Plaintiffs were interested in purchasing the property at Bangalore to set up a 5 Star Hotel there and therefore they started negotiations with United Breweries (Holdings) Ltd. for acquisition of the land for that purpose. According to the Plaintiffs, the Defendants Nos. 1 & 2, who are related to them and also are doing business with them, agreed with the Plaintiffs that they would through their nominee company acquire the said property and would give the Plaintiffs equal shares and directorship in the company and that a 5 star Deluxe Hotel would be constructed and operated on the said property by Mariott International. According to the Plaintiffs for this purpose Defendant No.4 company was registered. According to the Plaintiffs, Defendant No.1 and Defendant No.3 are the shareholders of the Defendant No.4/company. According to the Plaintiffs, the Defendant No.1 and Defendant No.2 in view of the agreement with the Plaintiffs agreed to purchase the land from United Breweries (Holdings) Ltd. for consideration of Rs.43,50,00,000/- plus Rs.2 Crore in cash. According to the Plaintiffs that agreement was entered into in the month of September, 2003 and on 27th September,

2003 an agreement in writing was executed between the owner of the land the Defendant No.4 for purchase of the land by Defendant No.4. According to the Plaintiffs, the Plaintiff No.1 also paid an amount of Rs. 1 Crore to the Defendant No.2. According to the Plaintiffs, in the month of October, 2003 even a public notice was issued inviting objections and claims in respect of sale of the property in favour of the Defendant No.4. According to the Plaintiffs, it is thereafter that the Defendant No.1 and Defendant No.2 changed their mind. According to the Plaintiffs, the Defendants Nos. 6 & 7 are nominees of the Defendants Nos. 1 & 2. Defendants Nos. 1 & 2 put up defendants Nos. 6 & 7 for purchasing the property in favour of the Defendant No.5 which was owned by the Defendants Nos. 6 & 7 only. According to the Plaintiffs, the agreement between the owner of the land and the Defendant No.4 was cancelled and for the same consideration the land was now agreed to be transferred to Defendant No.5. According to averments in the plaint, the Defendant No.4 has also signed the agreement whereby the owner of the land is now to transfer the land in favour of the Defendant No.5. The amount that was paid by the Defendant No.4 to the owner of the land has been refunded to the

Defendant No.4. According to averments in the plaint, the Defendant No.1 had agreed to purchase the property pursuant to the agreement entered into by them with the Plaintiffs. They were holding the property in fiduciary capacity and they have in breach of their fiduciary duty and in dishonest manner put up Defendants Nos. 6 to 9 as their nominees to purchase the property in the name of the Defendant No.5 which is a company owned by the Defendants Nos. 6 & 9. The Plaintiffs, therefore, pray for a decree of declaration that the Defendants Nos. 1 & 2 and/or 6 to 9 hold 50% of the shares of the Defendant No.5 company and 50% of the shares are held by the Plaintiffs. Plaintiffs also pray for a decree for transfer of 50% of the issued share capital of Defendant No.5-company to the Plaintiffs and for appointment of 50% of the Directors of the Board of Directors of the Defendant No.5/company. By this Notice of Motion, the Plaintiffs claim an order for appointment of the Receiver on the property which is purchased by Defendant No.5. The Plaintiffs also seek a temporary injunction restraining the Defendants from transferring etc. the property. They have also claimed temporary injunction restraining the Defendants from raising any

construction on the property. A temporary injunction is also sought restraining the Defendants from transferring the shares of the Defendant No.5/company. Because of the order passed by the Appeal Court presently ad-interim order in terms of prayer clause b(ii) and b(iii) is operating. By that order the Defendants are restrained from alienating and constructing on the property and the Defendants are also restrained from transferring shares of Defendant No.5/company.

2. I have heard the learned Counsel appearing for both sides in detail. Perusal of the record shows the foundation of the suit of the Plaintiffs is the document, copy of which is at Exh."L" to the plaint dated 27th September, 2003. That document reads as under:-

27th September,2003

To,
Mr.G.L.Reheja,
Mr.Sandeep Rejeha,

Sub: UB City Property of 3 acres bearing

Khatta No.24 situate at the corner of Kasturba Gandhi Marg and Vithal Mallya Road, Bangalore.

We confirm that we are buying the above property in a company called Mont Blanc Hotels Pvt.Ltd. and to make you a partner, we are giving you equal shares on the same terms and conditions & equal directorship in Mont Blanc Hotels Pvt. Ltd. as our groupholds. Both our groups confirm that Marriott shall have equity stake in the company. We shall carry out the amendments to the memorandum of Article, in 30 days and shall then give the equity to you.

Thanking you,
sd/-
Vijay Raheja sd/-
Directors Deepak Raheja

We confirm the above

sd/- sd/-
Sandeep Reheja Gopal Raheja

3. According to the Plaintiffs, by this document the Defendants Nos. 1 & 2 who are signatories to this document agreed to buy the property at Bangalore in the name of Defendant No.4 and thereafter to take the Plaintiffs as partners in equal right. It is to be seen that even if this document is accepted at its face value, the Defendants Nos. 1 & 2 had agreed to purchase the property in the name of the Defendant No.4 company and the Plaintiffs were to be given equal ownership by the Defendant No.4. However, presently the ownership of the land is not with the Defendant No.4. Admittedly presently the Defendant No.5-company is the owner of the land. Defendants Nos. 1 & 2 admittedly are not the share holders of the Defendant No.5. According to averments in the plaint, it is the case of the Plaintiffs that although the Defendant No.5 is ostensibly owned and controlled by Defendants Nos. 6 to 9, the record, circumstances and sequence of events establish that the Defendant Nos. 6 to 9 are the nominees of the Defendants Nos. 1 & 2. According to the Plaintiffs, Defendants Nos. 6 to 9 are only

nominees acting at the instance and at the behest of the Defendants Nos. 1 & 2 and they are only the vehicle through which the Defendant No.5 have purported to acquire the entire property to the exclusion of the Plaintiffs in breach of fiduciary duty. In the suit, though the Plaintiffs are claiming transfer of 50% shares of Defendant No.5 in their favour, they are not seeking a decree of declaration that the Defendants Nos. 1 & 2 are the real owners of the Defendant No.5 company. In my opinion, in the absence of prayer for a decree for declaration that the Defendants Nos. 1 & 2 and not the Defendants Nos. 6 to 9 are the real owners of the Defendant No.5 company, the Plaintiffs would not be entitled to a decree for transfer of any shares of the Defendant No.5 in their favour, because the Plaintiffs do not have any privity of contract with the Defendant No.5. Apart from the fact that the Defendants have placed material on record to show that the Defendants No. 6 to 9 have their own finacial standing and they are not nominees of the Defendants Nos. 1 & 2, from the averments in the plaint and the affidavit filed in support of the motion and the documents produced therewith the Plaintiffs want the Court to draw an inference that

the Defendants Nos. 1 & 2 are the real owners of Defendant No.5 because even after purchase of the land by Defendant No.5 and withdrawal from the transactions by Defendant No.4, Defendant No.1 continues to be associated with the hotel project. In my opinion, even assuming that such an inference is possible, the Plaintiffs would not be entitled to any relief being granted in their favour, because from the alleged conduct of Defendant No. 1 of continuing to be associated with the hotel project, even after withdrawal of the Defendant No.4 from that project, more than one inferences can be drawn. The other inferences possible are that the Defendants Nos. 1 & 2 may be continuing to be associated with the hotel project because Mariott is associated with the project and Defendants Nos. 1 & 2 on the showing of the Plaintiffs themselves have relationship with Mariott. Defendants Nos. 1 & 2 on the showing of the Plaintiffs themselves has know-how of the hotel business, therefore, their help may have been solicited by Defendant No.5 in executing the project. In my opinion, from the alleged conduct of the Defendant No. 1 of being associated with the hotel project, one can not conclude that they are the owners of the Defendant

No.5 company and not the Defendants Nos. 6 to 9. The Plaintiffs, apart from alleged continued involvement of the Defendant No.1 in the hotel project of Defendant No.5, have not produced any other material on record which will establish that the Defendants Nos. 6 to 9 do not have their own independent standing and that they are mere nominees of the Defendants Nos. 1 and 2. Really speaking the material produced on record by Defendants Nos.5 to 9 shows that the position is otherwise. In any case, as observed above, the Plaintiffs are not claiming a decree of declaration to that effect. Admittedly, as the position stands today, the property is of the Defendant No.5. Defendants Nos. 6 to 9 are holding shares of Defendant No.5. They have no connection, no agreement and no contract with the Plaintiffs.

4. Taking overall view of the matter, therefore, in my opinion, it cannot be said that the Plaintiffs have made out a strong prima facie case in their favour so as to entitle them to the drastic interim orders sought in the Notice of Motion. It was repeatedly said before me that the hotel project is of an amount in excess of Rs.250 crores. The value

of the land itself is in excess of Rs.40 crores. In my opinion, therefore, stopping construction of the hotel will not be appropriate. Similarly, granting a blanket orders restraining the Defendants from alienating, transferring or creating third party in the property may also cause hindrance in the implementation of the project, because for the purpose of carrying out project of such magnitude, it may become necessary for the Defendant No.5 to create encumbrances on the property. In my opinion, therefore, following order would meet the ends of justice.

O R D E R

(i) Defendant No.5 is directed that any construction that may be carried out on the land shall be in accordance with the sanctioned building plan without any impermissible deviation there from;

(ii) Creation of any encumbrances on the land during the pendency of the suit shall be subject to the result of the suit and the person in whose favour the encumbrance is created would be informed about

it in writing;

(iii) Any development that may be carried out on the land shall be subject to the result of the suit;

(iv) Defendant No.5 shall always retain 50% of the authorised share capital of Defendant No.5 with itself during the pendency of the suit.

(v) Notice of Motion disposed of.

. The learned Counsel appearing for the Plaintiffs requests that the ad-interim order, which has been passed by the Appeal Court, should continue for a period of four weeks from today.

. The request is opposed by the learned Counsel appearing for Defendants Nos. 5 to 7. According to them because of the ad-interim order the entire functioning of the project comes to an end.

. After having found that the Plaintiffs do not have a prima facie case in their favour, it will not

be in the interest of justice to continue the ad-interim order. The request is rejected.

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